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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2579 OF 2002

Satishkumar S.Nirankari .. Petitioner

versus

Dena Bank .. Respondent

...

Mr.N.M.Ganguli for Petr.

Mr S.K.Talsania i.b Sanjay Udeshi & Co for Respt

CORAM : D.G. KARNIK, J

DATED : 12th July 2005.

P.C.

1. By this petition the petitioner workman challenges part of the judgment and final order dated 9th May 2002 passed by the Presiding Officer Central Government Industrial Tribunal II, Mumbai (for short the tribunal).

2. The petitioner was appointed as a temporary/badli peon, at Orlem, Branch of the respondent bank on 15th May, 1989 on daily wages of Rs.50/-. Though the petitioner completed 240 days of continuous work the petitioner was not absorbed as a regular workmen. Inspite of the petitioner's request his services were not regularised and he

was continued only as a badli workman till 31st May 1999 when the petitioner's services were terminated. At the request of the petitioner the Central Government made a reference under section 10 of the Industrrial Disputes Act to the tribunal on the following :

> " Whether the action of the management of Dena Bank in terminating the services of Shri Satish Kumar S.Nirankari Sub-staff with effect from 31st May 1999 and non-regularisation in bank's services in sub-staff cadre is legal and justified ? If not what relief the workmen is entitled to?"

3. After permitting the parties to adduce the evidence and hearing them the tribunal by its order dated 9th May 2002 held that the action of the respondent bank in not regularising the services of the petitioner was not legal and not justified and ordered :

> " Management Dena Bank is directed to regularise Nirankari in sub-staff cadre as per the rules as and when permanent vacancy arises."

4. That part of the order which directs

regularisation with effect from the date when the permanent vacancy arises is challenged in this writ petition.

5. The respondent has not challenged the award of the tribunal and has reinstated the petitioner in its employment. By an order dated 25th November, 2002 this court while admitting the petition this Court directed the respondents to regularise the petitioner in service with effect from the date of the award of the tribunal i.e. 9th May, 2002 as and by way of interim relief. The petitioner is unwilling to accept the interim order passed by this court on 25th November, 2002 as the final order. Learned counsel for the petitioner further submits that the petitioner is entitled to be absorbed in employment immediately on completion of 240 days and needs an adjudication on this issue.

6. Learned counsel for the respondent invites my attention to the decision of the Supreme Court in Manager, R.B.I. Bangalore vs S.Mani reported in 2005 II CLR 3. In para 54 of the decision the Supreme Court quoted with approval a passage from its earlier decision which runs as follows:

> "Regularisation in our considered opinion is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the

> Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. vs Suresh Kumar Verma and Anr. JT 1996 (2) SC 455). "

7. Therefore contention of the petitioner that he is entitled to be made as a permanent workman immediately on completion of 240 days of completion of service cannot be accepted. The issue however still remains as to from what date the petitioner is entitled to be confirmed. According to the learned counsel for the parties the possible dates for confirmation could be:

i) the date when permanent vacancy arose in the concerned branh of the respondent bank.

(ii) the date when permanent vacancy arose in any other branch of the respondent to which the petitioner’s services could be transferred.

(iii) the date of the reference to the Industrial Tribunal by the Central Government.

(iv) the date of the order of the tribunal.

8. Though the tribunal has accepted first of the aforesaid four dates as the date of regularisation it has not given any reasons for choosing the date. In the circumstances, the matter is required to be remanded back to the tribunal for decision on the date from which the petitioner's services be regularised.

9. For these reasons, the petition is partly allowed. The matter is remanded back to the tribunal for the purpose of considering and giving a reasoned finding as to the date from which the petitioner's services should be deemed to be regularised.

D.G.KARNIK, J